
Barbara Yaroslavsky, Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Third Amended
Accusation Against:

PAUL A. FROHNA, M.D.

Physician and Surgeon's Certificate
No. A80895

Respondent

Case No. 04-2008-192196

OAH No. 2011090512

AMENDED PROPOSED DECISION

Carla Nasoff, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on January 28 and 29, 2013, in San Diego, California.

Matthew M. Davis, Deputy Attorney General, appeared on behalf of the Attorney General's Office.

Robert W. Frank, Attorney At Law represented Paul A. Frohna M.D., who was present throughout the hearing.

The matter was submitted on January 29, 2013. (An amended proposed decision is being issued with the following typographical corrections: In Factual Finding 3, November 21, 2001, was changed to November 21, 2011. In Legal Conclusion 15, section 2234 was changed to 2239).

FACTUAL FINDINGS

Licensure and Background

1. On October 25, 2002, respondent was issued Physician's and Surgeon's Certificate Number A80895. Respondent's license will expire on April 30, 2014, unless renewed.

2. On January 8, 2013, complainant Linda K. Whitney, Executive Director of the Medical Board of California (the Medical Board), filed a Third Amended Accusation against respondent. On January 28 and 29, 2013, an administrative hearing was conducted.

The Circumstances that Gave Rise to the Disciplinary Action

3. On October 2, 2008, respondent was convicted on his plea of no contest to driving a vehicle under the influence of alcohol (DUI). The circumstances that lead to the conviction were that on March 22, 2008, respondent attended a party, drank alcohol, and drove his car one mile to his home. Respondent failed to stop at a stop sign and a police officer pulled him over. Respondent failed the sobriety test and was later convicted on his plea of no contest. Respondent was placed on summary probation, placed on standard alcohol conditions, enrolled in a first conviction program and was fined \$1,912. Respondent testified that he completed all the terms of his probation.

On November 21, 2011, respondent ingested 10 mgs of Ambien¹ in combination with a double screwdriver (two shots of vodka) during an international flight from London to San Diego. Although respondent did not remember what happened during the flight, he awoke to find himself restrained in a seat in the back of the airplane. Respondent was described in the police records as refusing to sit down while the plane was in flight and stumbling over passengers. He refused to follow the directions of the flight crew and captain and kicked and spat at a passenger who tried to subdue him. Respondent was restrained with handcuffs and shoulder straps in the back row of the plane for the remainder of the flight. Respondent had no memory of the events of the flight.

Factor in Aggravation

4. A 2002 DUI conviction was alleged as a factor in aggravation. Both parties stipulated that this conviction was time-barred as the statute of limitation had passed and thus the matter was brought as a factor in aggravation. The circumstances of the 2002 DUI conviction were that on Christmas Eve 2000, respondent lived in Austin Texas, attended a club, drank alcohol, and drove his car three to four miles home. He was stopped for speeding and arrested for DUI. He pled no contest and was convicted in 2002.

Complainant's Motion to Compel Discovery of David Jacob's Ph.D.'s Records

5. On January 28, 2013, complainant's motion to compel discovery of respondent's expert's records was heard. On May 25, 2012 and on December 27, 2012 respondent submitted an expert witness disclosure pursuant to Government Code section 11507.6 and Business and Professions Code section 2334 listing David Jacobs, Ph.D., as respondent's treating psychologist and expert witness. Complainant filed a request for discovery to produce Dr. Jacob's psychological records pertaining to his care and treatment of respondent. On January 25, 2013, respondent filed an Opposition to the Motion to

¹ Ambien (zolpidem) is a sedative and used to treat insomnia.

Compel Discovery claiming in part that respondent had not waived his right to assert the patient/psychologist privilege when Dr. Jacob's was named as the respondent's expert/percipient witness. Complainant's motion to compel discovery was granted as the expert's psychologist medical records would be the type of records that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony related. The respondent's expert David Jacobs, Ph.D., was ordered to produce his entire psychological records for respondent. Once the proceedings were terminated, Dr. Jacob's psychological records of respondent were sealed.

Police Officer Mariusz Czas's Testimony - 2008 DUI Conviction

6. Officer Mariusz Czas has been employed with the San Diego police department for the past ten years. In May 2008 he was part of a DUI team. On May 23, 2008 he stopped respondent after respondent failed to stop his vehicle at a stop sign. Officer Czas testified that he smelled alcohol on respondent and asked him whether he had been drinking. Respondent initially denied that he drank any alcohol; however five minutes later, respondent stated he had consumed two rum and cokes. Officer Czas described respondent's demeanor as "indifferent." Respondent failed the sobriety test and he was arrested for driving under the influence of alcohol.

Michael Tovey's Testimony - Ambien and Alcohol Incident

7. Michael Tovey was a passenger on the November 21, 2011, British Airways flight from London to San Diego. The total flight time was 11 hours. Three hours into the flight he saw respondent stand up and climb over the passengers' seats. Two female flight attendants tried to assist respondent back to his seat, but were unsuccessful. Mr. Tovey testified that he saw respondent, "Lunge at the female flight attendant's breast, scratch . . . spit . . . (and) scream at the top of his lungs." Mr. Tovey was concerned for his safety and held respondent down while the senior flight attendant placed him in restraints.

James Cambas's Testimony

8. James Cambas was a passenger on the November 21, 2011 British Airways flight from London to San Diego. While the seatbelt sign was on, he saw respondent get out of his seat. Mr. Cambas believed that respondent was intoxicated, but testified, "I can't say that I smelled alcohol." Mr. Cambas tried to persuade respondent to sit down, but was unsuccessful. Another male passenger walked by and a physical altercation occurred when respondent "charged or lunged at someone." Mr. Cambas testified that respondent was "definitely struggling and did not want to be restrained." Respondent was restrained for the remainder of the flight. Once they landed the plane, law enforcement took respondent off the plane.

Respondent's Testimony

9. Respondent is married and lives with his wife and three small children. In

1987, respondent received his Pharmacy degree from the University of Texas at Austin College of Pharmacy. In 1995, he received his Ph.D. in Pharmacology from the University of Pennsylvania School of Medicine. In 2000, respondent received his medical degree from Georgetown University Medical Center in Washington, D.C. In 2001, respondent received his graduate training in Clinical Research from the University of California, San Francisco. Since 2001, respondent has been a physician-scientist with expertise in translational medicine, clinical research and clinical strategies in the area of cardiovascular disease, gastroenterology and oncology. He has designed, monitored and conducted more than 25 clinical trials, filed 10 INDs (investigational new drugs), multiple European CTAs (clinical trial agreements) and has contributed to two approved U.S. filings. From 2001 to 2003, respondent worked at Genetech Inc., a biotechnology company. Respondent was initially hired as the Associate Medical Director and later as the Medical Director in Biotherapeutics in the area of Clinical and Experimental Pharmacology. From 2004 to 2006, respondent worked as the Head Clinical Pharmacology and Director of Clinical Development at CV Therapeutics in Palo Alto, California. From 2007 to 2008, respondent was Vice President of Clinical Research and Regulatory Affairs at Stemmedica Cell Technologies, Inc. in San Diego, California. From 2009 to 2012, respondent worked as Chief Medical Officer for ProFibrix, a privately held company based in Seattle, Washington. Respondent commuted to Seattle during the week while his family lived in San Diego. He did not believe ProFibrix had enough funding to sustain the company, and this was a source of stress for him. In January 2013, respondent accepted a Chief Medical Officer's position at Samumed, Inc. based in San Diego. He has been involved in drug development since 2002 and has never participated in direct patient care responsibilities since completing his residency in 2001.

In 2002, respondent was convicted on his plea of no contest to DUI in Texas. The circumstances that gave rise to this conviction were that respondent drank alcohol while he was at a Christmas Eve party and then drove home. He was stopped for speeding and arrested for DUI. He was sentenced to three days in jail, fined \$1,000 and his driver's license was suspended for six months. Respondent completed all that the court required of him and paid all fines and fees. The California Medical Board never filed an accusation based on this conviction and added this to the Third Amended Accusation as a factor in aggravation.

On October 2, 2008, respondent was convicted of DUI in San Diego, California. He attended a dinner party, consumed alcohol and drove one mile to his home. He failed to stop at a stop sign and was arrested. Respondent pled no contest to the DUI charge. He testified that, "I was embarrassed It was dumb for some someone like me to do that." He completed all that the court required of him, paid all fines and fees, attended a DUI class, performed his community service and participated in Alcoholic Anonymous (AA) meetings for a total of four months. Since the 2008 incident, respondent testified that he no longer drinks and drives.

From 2009 to 2012, respondent testified that he drank alcohol (wine) while he worked in Seattle because he was alone and lonely. His family lived in San Diego, and he flew every week to Seattle and stayed by himself in a hotel for the week. He drank about 2 to three

glasses of wine a week during this time period. He never experienced any alcohol withdrawals, shakes, tremors or nausea.

On November 21, 2011, respondent boarded an airplane from London to San Diego. While in flight, respondent took 10 mg of Ambien and consumed a double screwdriver (two shots of vodka and orange juice). Respondent testified that on nine (9) previous international flights he had taken Ambien 5 mg with alcohol, but this was the first time he took 10 mgs of Ambien with alcohol. After taking the Ambien and alcohol mixture, he had no memory of any of the events that took place during the flight. The next thing respondent recalled was that he awoke, he was in the back of the airplane, both his wrists were handcuffed to his chair and his shoulder was restrained with a shoulder harness. He had a bruise and bump on his forehead. He was escorted off the plane by police and spent the next two hours in the immigration office of the airport answering questions. While detained at the airport, no sobriety testing was performed. Respondent testified, "I was fuzzy mentally but physically fine...I believe I had an adverse reaction to the drug...a side effect of Ambien is somnambulism²." Respondent testified that he was aware of these types of side effects before he took Ambien. He never took Ambien at home and would only take Ambien on international flights. He conducted extensive medical research regarding Ambien use and found that this amnesia-like state was more common than he thought. Respondent testified that he reported his Ambien adverse reaction to the FDA, conducted an extensive Medline search and identified and submitted voluminous publications that involved somnambulation, amnesia and delirium as a result of Ambien use.

Respondent was aware at the time that he took Ambien that he was not to consume alcohol. As a pharmacist and as a physician he knew that Ambien mixed with alcohol was contraindicated and was aware of the warning placed in the drug packet insert. Respondent testified that he took Ambien a total of ten (10) times, always with alcohol, and only on international flights. The previous nine (9) times he took Ambien, he took only 5 mgs but always with alcohol. Respondent testified that he did not believe that alcohol was the cause for what happened on the plane. Respondent testified that based on his experience and research, the reason why Ambien mixed with alcohol is contraindicated is because that combination can cause central nervous system (CNS) depression. The CNS depression may then lead to excessive shut down of the brain that depresses or "shuts off" the respiratory system.

Respondent testified, "I don't think alcohol and Ambien should be taken together because of the CNS depression."

Respondent testified that he did not immediately tell his wife that he was detained at the airport. His wife discovered the airplane incident when reporters came to their door the following day to interview respondent. Respondent readily admitted he initially hid the airport incident from his wife.

² Somnambulism is a disorder that occurs when people walk or do other activity while they are still asleep.

Respondent testified, “It is good standard practice to not take Ambien and drink alcohol.”

Respondent met with Dr. Matthew F. Carroll, a psychiatrist who was retained by complainant to conduct an interview with respondent. Respondent testified that the meeting with Dr. Carroll went very well. Respondent testified that he was open and forthright with Dr. Carroll regarding the circumstances that lead to the accusation.

Other than his treatment sessions with his psychologist, Dr. Jacobs, he has not attended support groups, rehabilitation treatment centers or visited any other substance abuse therapists. Respondent testified, “I am not going to drink again...I have had one drink (a beer) since April 2012...I don’t need it now...alcohol is not a necessary part of my life...I have made a conscious decision since April 2012 to go without it...I don’t consider myself an alcoholic...I am not a drug abuser...no one has ever told me I was an alcoholic...I see Dr. Jacob, as a sounding board... I am now a better spouse...I exercise now, I’ve opened up with my wife...Drinking and driving is a dangerous activity.”

Respondent was credible. He responded to questions readily and with appropriate detail. He maintained good eye contact and was forthright, humble and apologetic for his prior conduct. Respondent was believable and took responsibility for his actions. His testimony was sincere when he stated that he no longer needed to drink to obtain a sense of comfort.

David Jacobs Ph.D. -- Respondent’s Treating and Expert Witness

10. David Jacobs Ph.D. has been a licensed psychologist for the past 23 years. He received his doctorate from the University of Chicago. He has an active full time practice and treats 15 to 20 patients a week. He is an addiction specialist and treats patients with substance abuse. His treatment modality includes individual psychotherapy and guided meditation. He does not subscribe to the 12-step AA program and does not believe addiction is a disease. His practice is an alternative to the traditional AA model.

Dr. Jacobs began treating respondent in December 2011. Respondent’s wife referred him to Dr. Jacob because of the “airplane incident.” At the beginning of respondent’s treatment, respondent worked in Seattle four days a week and commuted from San Diego where his family lived. Dr. Jacobs believed that respondent was stressed while he worked in Seattle because he was alone and away from his family. As a result of being alone and isolated, Dr. Jacob concluded respondent drank alcohol for comfort. When respondent changed his employment and relocated full time to San Diego, he became less angry and resentful. Respondent became closer to his family and was financially more stable in his new position. According to Dr. Jacobs, the employment change resulted in great benefits to respondent’s emotional life. Dr. Jacob never referred respondent to a residential treatment center or intensive care rehabilitation program. Dr. Jacobs did not request biological testing to verify sobriety as part of his treatment. Dr. Jacobs believed that patients are usually not

successful when there are imposed threats and coercion. Instead, Dr. Jacob's relied on respondent's self-reporting during his bi-monthly psychotherapy sessions.

Dr. Jacobs described respondent as a "highly functional person." In March 2012, respondent told Dr. Jacob's that he met with the medical board's forensic psychiatrist and that it "went well." Dr. Jacobs testified that in May 2012, respondent consumed one beer, but Dr. Jacobs did not believe that one beer in 13 months was a significant finding. In June 2012, respondent told Dr. Jacobs that he was no longer drinking alcohol and that his relationship with his wife was better as she trusted him more and more. In July 2012 respondent again told Dr. Jacobs that he was not drinking alcohol and Dr. Jacobs testified, "I did not doubt his veracity."

Throughout his treatment Dr. Jacobs saw an evolution of maturity as respondent became more open, developed more intimacy and established a better relationship with his wife. Dr. Jacobs testified that, "He [respondent] is a smart person, is mentally stable and high functioning who is in touch with reality...can see the clear advantages of not drinking... does not drink to self medicate...has demonstrated good insight...made good progress...does not have an ongoing drinking problem...[and] has corrected the errors of his way." Dr. Jacobs testified that, "From my perspective, he now could stop therapy."

Dr. Jacobs testified that in his opinion respondent was a person with great integrity and did not have an ongoing drinking problem. Dr. Jacobs testified, "However, I can't guarantee that he won't drink."

No Expert Witness Testimony or Reports Submitted by Complainant

Complainant did not submit any reports of findings from her retained forensic psychiatrist, Dr. Matthew Carroll, nor did she call any expert to testify on her behalf.

Rehabilitation Evidence

11. Respondent testified that he complied with the terms and conditions of his criminal probation for his DUI conviction. He made no effort to excuse his conduct in the DUI matter or with his use of mixing Ambien with alcohol. At the administrative hearing, respondent appeared remorseful and contrite. Although respondent appeared somewhat aloof and reserved, that appeared to be representative of his general demeanor as opposed to a character flaw. His training and work is based in scientific research as opposed to direct patient care. His social skills may be interpreted as "indifferent," per Officer Czas' testimony; however, at the administrative hearing, respondent was attentive, engaged, remorseful and although reserved, he showed remarkable insight and was forthright. He has taken steps to prevent relapse into the lifestyle that led to his excessive drinking. He changed his employment securing a more stable financial future. He relocated to San Diego to be closer to his support system that included his wife and family. He voluntarily participated in psychological treatment with his psychologist, Dr. Jacobs. He has been active in exercise,

particularly surfing, and his outlook on life is better. He no longer feels alone as he once did in the past.

The Board's primary responsibility is to protect the public. Respondent demonstrated by clear and convincing evidence that his initial efforts made toward rehabilitation have been successful. However, no letters of recommendation were provided by his employer or from those who know him well. No biological tests results were conducted to corroborate his sustained sobriety. An outright revocation is not warranted and would simply be punitive. A two-year probationary period with specific terms and condition is sufficient to ensure respondent maintains his sobriety and is sufficient to protect the public. This is a deviation from the recommended five-year probationary period because respondent has already been diligent regarding his rehabilitation, has voluntarily participated in bi-monthly psychological treatment sessions and has taken significant initial steps towards his sobriety. Any additional months of probation would not advance the public interest. A two-year period of probation with standard terms and specific conditions with random biological testing will sufficiently protect the public.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice. In furtherance of that goal, the board seeks to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

2. The purpose of administrative discipline is not to punish licensees but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable, or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Burden and Standard of Proof

3. The standard of proof in an administrative action seeking to suspend or revoke a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Disciplinary Statutes and Regulations

4. Business and Professions Code section 2227 provides in part:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

- (1) Have his or her license revoked upon order of the board.
- (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
- (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
- (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
- (5) Have any other action taken in relation to discipline as part of an order of probation as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Business and Professions Code section 2234 subdivision (a) provides in part that the board shall take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v Board of Medical Examiners* (1978) 81 Cal. App. 3d 564, 575.)

6. Business and Professions Code section 2230.5 subdivision (a) provides the maximum time limit for filing an accusation against a licensee. It provides in part that any accusation shall be filed within three (3) years after the board discovers the act alleged as the ground for disciplinary action or within seven (7) years after the act occurs, whichever occurs first.

In this matter, respondent was arrested on December 24, 2000, the conviction was in 2002 and the statute of limitations for the board to bring an accusation related to this conviction expired seven years later. However, the board did not file its initial accusation against respondent until March 4, 2010. There was no dispute between the parties that the 2002 conviction was time-barred but the complainant provided it under the separate heading of Factor in Aggravation.

7. Business and Professions Code section 2236 provides in part:

(a) A conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee...

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

8. Business and Professions Code section 2239 provides:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

Regulatory Authority - Substantial Relationship Criteria

9. California Code of Regulations, title 16, section 1360 provides in part that for the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

10. California Code of Regulations, title 16, section 1360.1, sets forth the Board's rehabilitation criteria for suspensions or revocations and provides in part:

When considering...the suspension or revocation of a license... on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license certificate or permit shall consider the following criteria:

- (a) Nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the licensee...has complied with any terms of...probation, restitution or any other sanctions lawfully imposed against such person.
- (e) If applicable, evidence of expungement proceedings...
- (f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

Substantial Relationship

11. Licensing authorities do not enjoy unfettered discretion to determine on a case-by-case basis whether a given conviction is substantially related to the relevant professional qualifications. Business and Professions Code section 481 requires each licensing agency to develop criteria to aid it in determining whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (*Donaldson v. Department of Real Estate of State of Cal.* (2005) 134 Cal.App.4th 948, 955-956.)

Rehabilitation

12. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. The mere expression of remorse does not demonstrate

rehabilitation. A truer indication of rehabilitation will be presented if respondent can demonstrate by his sustained conduct over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) Rehabilitation is a “state of mind” and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved “reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidentiary significance of an applicant’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Evaluation

(a) DUI INCIDENT

13. Respondent had one 2008 DUI conviction. (The complainant is time-barred from asserting the July 2002 conviction as a basis for discipline in this matter, but this was taken into consideration as a factor in aggravation). Respondent used alcohol in a manner that was dangerous to himself and others. Business and Professions Code section 2239 subdivision (a) authorizes discipline of a physician for the use of alcoholic beverages “to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public.” The record of the conviction is conclusive evidence of such unprofessional conduct. The statute is sufficiently clear to give fair warning of the conduct it prohibits. (*Shea v Board of Medical Examiners* (1978) 81 Cal. App 3d 564 at 574.)

There is no dispute between the parties that when respondent drove his car after consuming alcoholic beverages, he posed a danger to himself and others. The conviction for the DUI was conclusive evidence of such unprofessional conduct. As explained by the court in *Griffiths v Superior Court* (2002) 96 Cal App. 4th 757 at 770, driving under the influence of alcohol demonstrates an inability or unwillingness to obey legal prohibitions against such conduct and constitutes a serious breach of a duty owed to society. Respondent’s conduct undermines public confidence in and respect for the medical profession. Such conduct reflects poorly on the physician’s common sense and professional judgment that are essential to the practice of medicine, and tends to undermine public confidence in and respect for the medical profession. Therefore cause exists to impose discipline for the 2008 DUI conviction.

(b) AMBIEN INGESTION WITH ALCOHOL

14. Respondent consumed alcohol with Ambien on ten (10) different occasions during his international airplane flights. Prior to November 21, 2011, respondent combined 5 mg of Ambien with alcohol on nine (9) international flights without incident. On respondent’s international flight taken on November 21, 2011, respondent increased his Ambien dose from 5 mg to 10 mg and drank a double screwdriver (two shots of vodka). Respondent knew, based on his knowledge as a physician and as a pharmacist, that it was contraindicated to consume alcohol with Ambien because of the risks of CNS depression and

the potential to stop breathing. Respondent readily admitted that it was good standard practice to not take Ambien and drink alcohol.

Respondent's action of repeatedly consuming alcohol with Ambien is no different than one who repeatedly drinks alcohol in a dangerous fashion. It reflects poorly on the physician's common sense and professional judgment that are essential to the practice of medicine, and tends to undermine public confidence in and respect for the medical profession. It is not necessary that the misconduct forming the basis for discipline to have occurred in the actual practice of medicine. (*Griffiths v Superior Court, supra*, 96 Cal.App.4th at 771). Although complainant did not submit evidence of the board's expert forensic psychiatrist findings, nor provide expert opinion as to whether Ambien alone, or in conjunction with alcohol, was the cause of the airplane incident, the mere fact that respondent repeatedly engaged in acts of mixing Ambien with alcohol constituted unprofessional conduct. His actions impaired his ability to practice medicine safely.

There is a logical nexus between respondent's repeated acts of consuming the mixture of Ambien with alcohol, coupled with respondent's 2008 DUI conviction and the qualifications, functions and duties of the profession. Clear and convincing evidence established that respondent engaged in unprofessional conduct.

The purpose of discipline is not to punish, but to protect the public. Respondent presented evidence of his self-reflection and remorse. Significant progress has been made toward his rehabilitation. Respondent took an employment position in San Diego to be close to his family. He voluntarily participated in psychotherapy. He is active in exercise, specifically surfing, and no longer isolates himself emotionally and physically from others. He was sincere when he testified that he had one beer in April 2012 and no alcohol since. He was credible when he testified that he no longer takes Ambien and no longer drinks alcohol.

Respondent did not corroborate his testimony by submitting character letters from those who know him well, such as those from family or friends. Respondent did not participate in or submit evidence of biological testing to support his sobriety.

Cause Exists to Impose Discipline

15. Cause exists, by clear and convincing evidence, to impose discipline on respondent's license based on Business and Professions Code sections 2227 and 2239 because respondent used drugs and alcohol to an extent in such a manner as to be dangerous or injurious to him and to others. Respondent was convicted of DUI in 2008. Respondent used alcohol in a manner dangerous to himself and others as evidenced by the DUI conviction. Respondent engaged in ingesting the mixture of alcohol and Ambien on ten different occasions. This conduct was dangerous to himself since he knew that the risk of that combination may cause CNS depression and respiratory difficulty.

16. Cause exists, by clear and convincing evidence, to impose discipline on respondent's license based on Business and Professions Code sections 2227 and 2234 because respondent was convicted of a crime (2008 DUI) substantially related to the qualification, functions or duties of a physician and surgeon.

17. Cause exists, by clear and convincing evidence, to impose discipline on respondent's license based on Business and Professions Code sections 2227 and 2234 because respondent engaged in unprofessional conduct which breached the rules or ethical code of the medical profession and engaged in conduct which was unbecoming to a member in good standing of the medical profession and which demonstrated an unfitness to practice medicine.

18. Cause exists, by clear and convincing evidence, to impose discipline on respondent's license based on Business and Professions Code sections 2227 and 2234 subdivision (a) because respondent violated the Medical Practice Act.

Although respondent has worked in the biotech industry conducting developmental research with no patient care contact since 2002, his medical license would still allow him to provide patient care despite his chosen field of interest. Therefore, discipline is warranted despite the fact that he remains in the medical research field with no patient care responsibilities.

A two-year probationary period with specific terms and conditions is sufficient to insure public safety. Although this is a deviation from the recommended five-year period, respondent has engaged in active rehabilitation and has demonstrated his serious commitment to sobriety with serious rehabilitation efforts: therefore, a shorter period of probation is warranted and ordered.

ORDER

Certificate No. 80895 issued to respondent Paul A. Frohna is revoked. However, revocation is stayed and respondent is placed on probation for two (2) years upon the following terms and conditions.

Standard Conditions

1. Notification

Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to

respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

2. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

3. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

4. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations no later than 10 calendar days after the end of the preceding quarter.

5. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days. In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

6. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

7. Non-practice while on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply to the reduction of the probationary term. Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

8. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

9. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, a Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his or her license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

11. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

12. Controlled Substances - Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee,

respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

13. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

14. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board

or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

If respondent fails to cooperate in a random biological fluid testing program within the specified time frame, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a request, the notification of cease practice shall be dissolved.

15. Continuation of Psychotherapy


Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. **RESPONDENT MAY CONTINUE TREATMENT WITH HIS CURRENT PSYCHOLOGIST.** Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over

respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions. Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

Dated: March 28, 2013


CARLA NASOFF
Administrative Law Judge
Office of Administrative Hearings

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8 *Attorneys for Complainant*

9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Third Amended Accusation
Against:

13 PAUL A. FROHNA, M.D.
14 331 Gravilla St.
15 La Jolla, CA 92037

16 Physician's and Surgeon's Certificate
No. A80895,

17 Respondent.

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 8 2013
BY H. Park ANALYST

Case No. 04-2008-192196

THIRD AMENDED ACCUSATION

18 Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Third Amended Accusation
21 solely in her official capacity as the Executive Director of the Medical Board of California,
22 Department of Consumer Affairs.

23 2. On or about October 25, 2002, the Medical Board of California (Board)
24 issued Physician's and Surgeon's Certificate Number A80895 to Paul A. Frohna, M.D.
25 (Respondent). Respondent's Physician's and Surgeon's Certificate No. A80895 will expire on
26 April 30, 2014, unless renewed.

27 ///

JURISDICTION

3. This Third Amended Accusation, which supercedes the Second Amended Accusation filed on June 5, 2012, in the above-entitled matter, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the division.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

“(4) Be publicly reprimanded by the division.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the division and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

///

1 5. Section 2234 of the Code states:

2 “The Division of Medical Quality¹ shall take action against any licensee
3 who is charged with unprofessional conduct. In addition to other provisions of
4 this article, unprofessional conduct includes, but is not limited to, the following:

5 “(a) Violating or attempting to violate, directly or indirectly, assisting in
6 or abetting the violation of, or conspiring to violate any provision of this chapter
7 [Chapter 5, the Medical Practice Act].

8 “...”

9 6. Unprofessional conduct under Business and Professions Code section 2234
10 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is
11 unbecoming a member in good standing of the medical profession, and which demonstrates an
12 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
13 575.)

14 7. Section 2236 of the Code states:

15 “(a) The conviction of any offense substantially related to the
16 qualifications, functions, or duties of a physician and surgeon constitutes
17 unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical
18 Practice Act]. The record of conviction shall be conclusive evidence only of the
19 fact that the conviction occurred.

20 “(b) The district attorney, city attorney, or other prosecuting agency shall
21 notify the Division of Medical Quality of the pendency of an action against a
22 licensee charging a felony or misdemeanor immediately upon obtaining
23 information that the defendant is a licensee. The notice shall identify the licensee
24 and describe the crimes charged and the facts alleged. The prosecuting agency

25 ¹ California Business and Professions Code section 2002, as amended and effective January 1,
26 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State
27 Medical Practice Act (Bus. & Prof. Code, §§ 2000, *et seq.*) means the “Medical Board of
28 California,” and references to the “Division of Medical Quality” and “Division of Licensing” in
 the Act or any other provision of law shall be deemed to refer to the Board.

1 shall also notify the clerk of the court in which the action is pending that the
2 defendant is a licensee, and the clerk shall record prominently in the file that the
3 defendant holds a license as a physician and surgeon.

4 “(c) The clerk of the court in which a licensee is convicted of a crime
5 shall, within 48 hours after the conviction, transmit a certified copy of the record
6 of conviction to the board. The division may inquire into the circumstances
7 surrounding the commission of a crime in order to fix the degree of discipline or
8 to determine if the conviction is of an offense substantially related to the
9 qualifications, functions, or duties of a physician and surgeon.

10 “(d) A plea or verdict of guilty or a conviction after a plea of nolo
11 contendere is deemed to be a conviction within the meaning of this section and
12 Section 2236.1. The record of conviction shall be conclusive evidence of the fact
13 that the conviction occurred.”

14 8. Section 2239 of the Code states:

15 “(a) The use or prescribing for or administering to himself or herself, of
16 any controlled substance; or the use of any of the dangerous drugs specified in
17 Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be
18 dangerous or injurious to the licensee, or to any other person or to the public, or to
19 the extent that such use impairs the ability of the licensee to practice medicine
20 safely or more than one misdemeanor or any felony involving the use,
21 consumption, or self-administration of any of the substances referred to in this
22 section, or any combination thereof, constitutes unprofessional conduct. The
23 record of the conviction is conclusive evidence of such unprofessional conduct.

24 “(b) A plea or verdict of guilty or a conviction following a plea of nolo
25 contendere is deemed to be a conviction within the meaning of this section. The
26 Division of Medical Quality may order discipline of the licensee in accordance
27 with Section 2227 or the Division of Licensing may order the denial of the license
28 when the time for appeal has elapsed or the judgment of conviction has been

1 affirmed on appeal or when an order granting probation is made suspending
2 imposition of sentence, irrespective of a subsequent order under the provisions of
3 Section 1203.4 of the Penal Code allowing such person to withdraw his or her
4 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
5 guilty, or dismissing the accusation, complaint, information, or indictment.”²

6 9. California Code of Regulations, title 16, section 1360, states:

7 “For the purposes of denial, suspension or revocation of a license,
8 certificate or permit pursuant to Division 1.5 (commencing with Section 475) of
9 the code, a crime or act shall be considered to be substantially related to the
10 qualifications, functions or duties of a person holding a license, certificate or
11 permit under the Medical Practice Act if to a substantial degree it evidences
12 present or potential unfitness of a person holding a license, certificate or permit to
13 perform the functions authorized by the license, certificate or permit in a manner
14 consistent with the public health, safety or welfare. Such crimes or acts shall
15 include but not be limited to the following: Violating or attempting to violate,
16 directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision of the Medical Practice Act.”

18
19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Use of Drugs or Alcoholic Beverages in a Manner, or to an Extent,
21 as to be Dangerous to Himself, to Another Person, or to the Public)**

22 10. Respondent has subjected his Physician's and Surgeon's
23 Certificate No. A80895 to disciplinary action under sections 2227 and 2234, as defined by section
24 2239, of the Code, in that he used or prescribed, or administered to himself, drugs or alcoholic
25 beverages to the extent, or in such a manner, as to be dangerous or injurious to him, to another

26 ² There is a nexus between a physician's use of alcoholic beverages and his or her fitness
27 to practice medicine, established by the Legislature in section 2239, “in all cases where a licensed
28 physician used alcoholic beverages to the extent or in such a manner as to pose a danger to
himself or others.” (*Watson v. Superior Court (Medical Board)* (2009) 176 Cal.App.4th 1407,
1411.)

1 person, or to the public, and has more than one misdemeanor conviction involving the use,
2 consumption, or self-administration of any of the substances referred to in this section, as more
3 particularly alleged hereinafter:

4 **October 2, 2008 Conviction**

5 (a) On or about May 23, 2008, respondent was pulled over by a police officer
6 from the San Diego Police Department (SDPD) at approximately 1:22 a.m. after the
7 SDPD officer observed respondent run a stop sign at 25 to 30 miles per hour.

8 (b) After pulling respondent over, the SDPD officer smelled alcohol on
9 respondent's breath and noted respondent's eyes were red, watery and droopy. When
10 asked by the SDPD officer if he had been drinking alcohol, respondent said he had
11 "absolutely nothing to drink."

12 (c) The SDPD officer administered the Standardized Field Sobriety Test
13 (SFST).

14 (d) The SDPD officer administered the Horizontal Gaze Nystagmus (HGN)
15 Test, and respondent could not smoothly pursue the tip of the officer's pen with his eyes.
16 Respondent exhibited HGN with onset prior to 45 degrees and distinct HGN at the
17 extremes.

18 (e) The SDPD officer administered the One Leg Stand Test. Respondent
19 started the test before instructed, swayed from side to side, used his arms for balance,
20 hopped on one foot and incorrectly counted.

21 (f) The SDPD officer administered the Walk and Turn Test. Respondent lost
22 his balance while the officer was giving him instructions, used his arms for balance,
23 stepped off the line, stopped walking in the middle of the test and lost his balance while
24 turning.

25 (g) The SDPD officer administered the Standing Alphabet and Count test.
26 Respondent swayed while balancing, used his arms to balance, incorrectly recited the
27 alphabet and incorrectly estimated 30 actual seconds as 25.
28

1 (h) Respondent was arrested and taken to headquarters, at which time he
2 provided a breath sample that demonstrated a blood alcohol level of 0.19 percent.

3 (i) On or about July 8, 2008, the San Diego City Attorney filed a Criminal
4 Complaint against respondent in the matter of *The People of the State of California v.*
5 *Paul Andrew Frohna*, Superior Court Case No. M-051689. Count One charged
6 respondent with driving under the influence of drugs and/or alcohol, in violation of
7 Vehicle Code section 23152, subdivision (a), a misdemeanor. Count Two charged
8 respondent with driving with a blood alcohol content level of 0.08 percent or more, in
9 violation of Vehicle Code section 23152, subdivision (b), a misdemeanor.

10 (j) On or about October 2, 2008, respondent was convicted upon his plea of
11 nolo contendere to Count One (driving under the influence of alcohol.) On or about
12 October 2, 2008, the Superior Court sentenced respondent to probation for five years, with
13 the following terms and conditions: (1) Pay fines totaling \$1,912.00, (2) Perform three
14 days of public service, with one day credit given for time served, and (3) Enroll in a First
15 Conviction Program.

16 **British Airways Flight #273**

17 (k) On or about November 21, 2011, respondent knowingly and improperly
18 consumed and mixed two "screwdriver" cocktails with an Ambien sleeping pill on British
19 Airways flight #273.

20 (l) During the flight respondent smelled of alcohol, appeared to be intoxicated,
21 and was incoherent. Respondent stood on his seat, climbed over his seat into an adjacent
22 row of seats, fell to the ground, sat in the lap of other passengers, and refused multiple
23 orders by the flight crew to sit in his seat and fasten his seat belt. Respondent attempted to
24 grab the breast of a flight attendant and had to be physically restrained by passenger M.T.,
25 other passengers and the flight crew. Respondent spit, scratched and kicked passenger
26 M.T. while he was being restrained.

27 (m) During the flight, respondent was handcuffed and tied to his seat in the
28 aircraft. After the aircraft landed at San Diego International Airport, respondent was

1 questioned by the San Diego Harbor Police who did not place him under arrest at that
2 time. The matter has since been turned over to the Federal Bureau of Investigation for
3 further investigation.

4
5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Conviction of a Crime Substantially Related to the Qualifications,
Functions, or Duties of a Physician and Surgeon)**

7 11. Respondent has further subjected his Physician's and Surgeon's
8 Certificate No. A80895 to disciplinary action under sections 2227 and 2234, as defined by section
9 2236, of the Code, in that he has been convicted of a crime substantially related to the
10 qualifications, functions, or duties of a physician and surgeon, as more particularly alleged
11 hereinafter:

12 (a) Paragraphs 10(a) through (j), above, are hereby incorporated by reference
13 as if fully set forth herein.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct)**

16 12. Respondent has further subjected his Physician's and Surgeon's
17 Certificate No. A80895 to disciplinary action under sections 2227 and 2234 of the Code, in that
18 he has engaged in conduct which breaches the rules or ethical code of the medical profession, or
19 conduct which is unbecoming to a member in good standing of the medical profession, and which
20 demonstrates an unfitness to practice medicine, as more particularly alleged hereinafter:

21 (a) Paragraph 10 and 11, above, are hereby incorporated by reference as if fully set
22 forth herein.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Violation of the Medical Practices Act)**

25 13. Respondent has further subjected his Physician's and Surgeon's
26 Certificate No. A80895 to disciplinary action under sections 2227 and 2234, as defined by section
27 2234, subdivision (a), of the Code, in that he has violated or attempted to violate, directly or
28

1 indirectly, or assisted in or abetted the violation of, or conspired to violate a provision of the
2 Medical Practices Act, as more particularly alleged hereinafter:

3 (a) Paragraphs 10, 11 and 12, above, are hereby incorporated by reference as if
4 fully set forth herein.

5 **FACTORS IN AGGRAVATION**

6 **The July 2002 Conviction**

7 14. On or about December 24, 2000, respondent was pulled over by a police
8 officer from the Austin Police Department (APD) at approximately 1:20 a.m. after the APD
9 officer observed respondent drive his car at 60 miles per hour on a road with a posted speed limit
10 of 30 miles per hour.

11 15. After pulling respondent over, the APD officer smelled alcohol on
12 respondent's breath. Respondent exited his car, and upon getting out of the car respondent
13 appeared unsteady and had to use his car door to maintain his balance. The officer continued to
14 observe respondent mumble and fumble as respondent attempted to retrieve his driver's license.

15 16. The APD officer administered the Standardized Field Sobriety Test
16 (SFST).

17 17. The APD officer administered the Horizontal Gaze Nystagmus (HGN)
18 Test, and respondent exhibited HGN with onset prior to 45 degrees and distinct HGN at
19 maximum deviation.

20 18. The APD officer administered the One Leg Stand Test. Respondent
21 swayed from side to side, used his arms for balance and hopped on one foot.

22 19. The APD officer administered the Walk and Turn Test. Respondent lost
23 his balance while the officer was giving him instructions, used his arms for balance, stepped of
24 the line five (5) times, took an improper number of steps and turned improperly.

25 20. Respondent admitted to drinking four to five "rum" drinks prior to driving.

26 21. Respondent was arrested and taken to headquarters, at which time he
27 refused to provide either a breath or blood sample.

28 22. On or about July 11, 2002, respondent pled nolo contendere to Driving

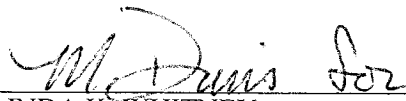
1 While Intoxicated (DWI) in the casè entitled *The People of the State of Texas v. Paul A. Frohna*,
2 Municipal Court of Travis County Texas Case No. 591537. On or about July 11, 2002,
3 respondent was sentenced to three (3) days in Travis County Jail, a \$1,000.00 fine and a six (6)
4 month license suspension.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein
7 alleged, and that following the hearing, the Medical Board of California issue a decision:

- 8 1. Revoking or suspending Physician and Surgeon's Certificate Number
9 A80895, issued to respondent Paul A. Frohna, M.D.;
- 10 2. Revoking, suspending or denying approval of respondent Paul A. Frohna,
11 M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 12 3. Ordering respondent Paul A. Frohna, M.D. to pay the Medical Board of
13 California the costs, if placed on probation, of probation monitoring; and
- 14 4. Taking such other and further action as deemed necessary and proper.

15 DATED: 1/8/2013

16 
17 LINDA K. WHITNEY
18 Executive Director
19 Medical Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant
23
24
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26
27
28